

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No.185/Chd/Hry/2021

Under Section 94, of the IBC 2016

In the matter of:

**Anita Bansal
Personal Guarantor**
having its address at
H. No. 21, Sector 15, Panchkula
Haryana

....Petitioner

Judgment delivered on: 21.07.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For the Petitioner : Ms. Niharika Sohal, Advocate with
Resolution Professional Mr. Bishwaranjan
Chatterjee

For the Respondent : Ms. Meena Malhotra, Advocate for
Creditor-Bank of India

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

1. The petition is filed by Anita Bansal (Personal Guarantor) under Section 94 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as code) read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor)

Rules, 2019 (hereinafter referred to as Personal Guarantors Insolvency Rules, 2019), seeking an order for initiation of the Insolvency Resolution Process (“IR Process”) against his/applicant who is the personal Guarantor to M/s. Orchid Textiles Private Limited (“Corporate Debtor/Principal Borrower”), who has extended personal guarantee to financial creditor namely, Central Bank of India and other lenders. The corporate debtor had availed a loan of Rs. 45,00,000/- from the Central Bank of India and to secure this debt Ms. Anita Bansal extended his personal guarantee in favour of the Central Bank of India. The said personal guarantee has been extended for the loan facilities availed by the corporate debtor.

2. The present application has been filed in the prescribed proforma. Moreover, the compliance affidavit pursuant to order dated 07.03.2022 has been incorporated vide Diary No. 00496/2 dated 15.03.2022, whereby applicant stating that in terms of provision of Section 94(4) of I & B Code, 2016 the applicant is not an undischarged bankrupt or not undergoing a fresh start process or not undergoing an insolvency resolution process or not undergoing a bankruptcy process. Also, in terms of the provisions of 94(5), no application has been admitted against the applicant during the period of 12 months preceding the date of submission of the present application under Section 94(1) of I&B Code, 2016.

3. On presentation of the application by the Applicant/Personal Guarantor, this Adjudicating Authority vide Order dated 21.03.2022 has appointed the Resolution Professional Viz Mr. Bishwa Ranjan Chatterjee, Registration No. IBBI/IPA-002/IP-N00877/2019-2020/12806 Phone No. 9711401771 Email: brcind@gmail.com. At the same time, limited notice of this petition to the creditor(s) for presence is issued on 21.03.2022 by this Adjudicating Authority,

pursuant to the said order compliance affidavit has been filed vide Diary No. 00496/4 dated 17.05.2022, whereby, the notice is served upon all the creditors via speed post. The original postal receipts and tracking report as obtained from India Post Website is attached as Annexure A-2 of the affidavit and some of the articles have been returned back and those have been submitted in the Registry vide Annexure A-3 of the affidavit. Subsequently, Ms. Meena Malhotra, Advocate appeared for respondent-creditor-Bank of India. It is to be noted that no objection/reply has been filed by the said respondent-creditor-Bank of India.

4. The Resolution Professional was directed to file the report under Section 99 of Insolvency and Bankruptcy Code, 2016 which has been filed by him through IA No. 422/2022 filed in CP(IB) No. 185/Chd/Hry/2021 recommending the admission of the application filed under Section 94 of IBC, 2016. The grounds for admission of the application recorded in the report are as follows.

The Resolution Professional sought the following information, explanation and clarification.

- a) *List of Personal assets and liabilities as on date of the order i.e., 21.03.2022.*
- b) *In case, if there any guarantee deed that had been executed from your end to any other Company apart from Orchid Textiles Private Limited.*
- c) *The assets which are mortgaged with the Creditors against the Guarantee, if any.*
- d) *Apart from the above, following documents are also required;*
 - *Income Tax returns along with its computation for last three Financial Years i.e., FY 2018-19, 2019-20 and 2020-21.*
 - *Statement of affairs; for last three Financial Years i.e., FY 2018-19, 2019-20 and 2020-21.*
 - *GST Returns: for last three Financial Years i.e., FY 2018-19, 2019-20 and 2020-21.*
 - *Details of the Bank Account on your name and the bank statements of the said bank accounts for last one year.*

In response to the above-mentioned information, explanation and clarification sought by Resolution Professional, the Personal Guarantor had given the following information:

a.a That the Personal Guarantor had not made any payment to any secured or unsecured creditor of the Corporate Debtor in his personal capacity.

a.b That the Personal Guarantor had guaranteed the loans extended by the banks to Corporate Debtor. Further, the Personal Guarantor had also shared the copy of Deed of Guarantee/Notices(Annexure A-2) executed between him and Central Bank of India (ANNEXURE A-2).

a.c In the meanwhile, an CP/IBC/52/2021 was filed by Manju Gupta under Section 7 of the Insolvency and Bankruptcy Code, 2016 before this Adjudicating Authority for recovery of a sum of Rs. 1,25,08,386/- (Rupees One Crores Twenty Five lacs Eight Hundred Three Hundred Eighty Six Only) from Corporate Debtor and personal guarantor jointly and severally.

a.d In addition to the above, as asked by the Resolution Professional, Personal Guarantor had provided his Net Worth Certificate as on 21/03/2022. As per the said certificate, the net worth of the Personal Guarantor is Rs -6.50 Crores.

a.e The Personal Guarantor had shared his Income Tax returns for financial year 2018-19, 2019-20 and 2020-21 and also shared the Bank Accounts being maintained by him.

a.f The Personal Guarantor has also shared the arbitral award is annexed as ANNEXURE A-10 of the Petition.

The Resolution Professional as mentioned in page 9 and 10 of this report under Section 99, had sought additional information, explanation and clarification in connection with the Application from the creditors of the Corporate Debtor for the following information:

“.... the current status of the repayment of debt by the Debtor Anita Bansal or by the Corporate Debtor M/s. Orchid Textiles Private Limited.

“...That the personal guarantor -Anita Bansal had guaranteed the friendly loans of Rs.1,25,08,386/- extended by Smt. Manju Gupta. Furthermore, the personal guarantor had also shared the copy of deed of MOU as well as copy of arbitral award.

“...That the personal guarantor -Anita Bansal had guaranteed the loans of Rs. 1,62,66,347.55/- extended by Indian Bank (Erstwhile Allahabad Bank). Furthermore, the personal guarantor had also shared the copy of deed of guarantee /notices /copy of orders of recall notice borrower also informed that, one complaint is pending before appropriate authority for recovery of the loan.

“...That the personal guarantor -Anita Bansal had guaranteed the loans of Rs29,17,694/- extended by Intec Capital Ltd. The borrower/guarantor had issued security cheques to the Intec Capital Ltd. Lenders have issued notice under section 138 of NI and the matter is sub-judice before the SAKET Court, New Delhi.

“...That the personal guarantor -Anita Bansal had guaranteed the business loans of Rs 8,00,000 (Rs. Eight Lacs Only) extended by Indusind Bank Ltd. The personal guarantor had issued a security cheque to the lender. The borrower has also given post-dated cheques/security cheques to the lender and borrower also informed that, he had no knowledge about any legal action taken by the lender or not for recovery of the loan.

“...That the personal guarantor -Anita Bansal had guaranteed /taken the housing loans of Rs 88,65,003.07/- extended by L and T Housing Finance Ltd. The borrower has also submitted post-dated cheques to avail and secure the facilities. The borrower has also given post-dated cheques/security cheques to the lender. L& T housing sold the properties mortgage with them and borrower also informed that, he had no knowledge about any legal action taken by the lender or not for recovery of the housing loan.

“...That the personal guarantor -Anita Bansal had guaranteed /availed the loans of Rs 45,00,000/- extended by Central Bank of India, Sector 35 Chandigarh. Furthermore, the personal guarantor had also shared the copy of deed of loan agreement/ guarantor /notices /copy of orders.

“....That the personal guarantor -Anita Bansal had guaranteed taken the personal loan of Rs 30,00,000/- extended by Edelweiss Retail Finance Ltd . The borrower further informed that they had issued post-dated cheques to avail the credit facility and nothing has been paid till date and borrower also informed

that, he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan.

“...That the personal guarantor -Anita Bansal had guaranteed taken the business/personal loans of Rs 39,08,711/- extended by Tata Capital Ltd. Further the borrower informed that he had issued post-dated cheques to the lender to avail the facilities and nothing has been paid till date and borrower and the matter is pending before JMIC Patiala District Court under Section 138. (COMA/862/2016, COMA/1602/2016, COMA/798/2017, COMA/801/2017, COMA/803/2017)

“...That the personal guarantor -Anita Bansal had guaranteed /taken the car loans of Rs 20,00,000 - (Rs. Twenty Lacs Only) extended by Kotak Mahindra Prime Ltd. Further the borrower informed that he had issued post-dated cheques to the lender to avail the facilities and nothing has been paid till date and borrower also informed that, the lender initiated the legal action recovery of the car loan and matter is sub-judice before the CJM. Chandigarh

“...That the personal guarantor -Anita Bansal had guaranteed taken the business loans of Rs 99,00,000/- from Indian bank ,Sector 35 Chandigarh and the current outstanding balance is Rs 94,61,115. Further the borrower informed that the matter is sub-judice at DRT ,Sector 17 -Chandigarh

“...That the personal guarantor -Anita Bansal had guaranteed Personal loan of Rs 17,00,000/- extended by Shri Kulwant Singh/Parminder Singh. Further the guarantor also informed that, he had paid appox 3 lacs till date and he has no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Anita Bansal had guaranteed and taken Personal loan of Rs 50,000/- (Rs. Fifty Thousand only) extended by Mr Naresh Singla. Furthermore, the personal guarantor had also shared the copy of deed of loan agreement/ guarantor /notices /copy of orders. Further the borrower informed that he had issued post-dated cheques to the lender to avail the facilities and nothing has been paid till date and borrower also informed that, the matter is sub- Judice before District Court, Panchkula.

“...That the personal guarantor -Anita Bansal had guaranteed and taken Personal loan of Rs 50,000/- (Rs. Fifty Thousand only) extended by Mr Greesh Singla. Furthermore, the personal guarantor had also shared the copy of deed of loan agreement/ guarantor /notices /copy of orders. Further the borrower informed that he had issued post-dated cheques to the lender to avail the facilities and nothing

has been paid till date and borrower also informed that, the matter is sub- Judice before District Court, Panchkula.

“...That the personal guarantor -Anita Bansal had guaranteed and taken Personal loan of Rs 8,00,000 (Rs. Eight Lacs only) extended by Mr Sanjay Singla. Furthermore, the personal guarantor had also shared the copy of deed of loan agreement/ guarantor /notices /copy of orders. Further the borrower informed that he had issued post-dated cheques to the lender to avail the facilities and nothing has been paid till date and borrower also informed that, the matter is sub- Judice before District Court, Panchkula.

“...That the personal guarantor -Anita Bansal had received notice on behalf Orchid Textiles Private Limited of Rs 21,763/- extended by Employee Provident Fund Organisation. The matter is sub- judice before Provident office, Chandigarh.

“.... That the personal guarantor -Anita Bansal had guaranteed the business/ friendly loan of Rs 30,00,000 extended by M/s K and A Forge Chandigarh. Further the guarantor informed that nothing has been paid till date and guarantor also informed that, he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan.

“...That the personal guarantor -Anita Bansal had guaranteed and taken Personal loan of Rs 1,50,000/- extended by Guru Nanak Dairy. Further the guarantor informed that nothing has been paid till date and guarantor also informed that, he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Anita Bansal had guaranteed and taken Personal /Business loan of Rs 10,00,000/- extended by Indo Farm Equipment Ltd Further the guarantor informed that nothing has been paid till date and guarantor also informed that he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“.... That the personal guarantor -Anita Bansal had guaranteed /taken the friendly loan of Rs 10,00,000/- extended by Shri Satpal Gupta. Further the borrower informed that he had issued post-dated cheque to the lender to avail the facilities.

“....That the personal guarantor -Anita Bansal had received notice to deposit Rs 1,50,000/- on behalf of the company from Excise and Taxation Department, Chandigarh

“....That the personal guarantor -Anita Bansal had guaranteed taken the business/personal loan of Rs 1,35,000 (Rs. One Lace Thirty Five Thousand only) extended by Kotak Mahindra Bank Ltd. Further the borrower informed that he had issued post-dated cheques to the lender to avail the facilities and nothing has been paid till date and borrower also informed that, the matter is sub- judice before District Court, Chandigarh.

“....In addition to the above the undersigned came to know that against the M/s. Orchid Textiles Private Limited the petition under section 7 of IBC, 2016 also been filed by Manju Gupta.

OBSERVATION AND RECOMMENDATION BY RESOLUTION PROFESSIONAL

In view of the above facts and circumstances, I, BISHWA RANJAN CHATERJEE, the Resolution Professional appointed by this Hon'ble Tribunal, vide order dated 21.03.2022 in C.P. (IB) NO. 185/CHD/Pb/ 2021, hereby confirm that, I have perused/examined all the underlying documents and annexure and all the parameters are duly complied as per the provision of IBC and all the requisite & requirement under section 94 are duly met with, therefore, the Resolution Professional is of the considered opinion that the application filed by the applicant for initiation of Insolvency Resolution Process against Mrs Anita Bansal, Personal Guarantor to the Corporate Debtor M/s. Orchid Textiles Private Limited is in compliance with the provisions of the Code. Hence, the Resolution Professional considering the requirements of the admission of Personal Guarantee as stipulated in the Code recommends under section 99 (7) for approval of the application for initiation of Insolvency Resolution Process against Smt Anita Bansal, Personal Guarantor to the Creditors of Orchid Textiles Private Limited on the following reasons:

- a That the Application filed by Mrs Anita Bansal, through Resolution Professional Sh. BISHWA RANJAN CHATERJEE (Resolution Professional) satisfies the requirement as set out in Section 94 of the Code;*
- b That the Corporate Debtor have committed default in repayment of Loan Facility granted by the aforesaid banks and/or financial institution. The same is evident from the fact that an application was also filed by Manju Gupta for initiating CIRP against the Corporate Debtor before the Hon'ble National Company Law Tribunal, Chandigarh.*
- c That Smt Anita Bansal, Personal Guarantor to Corporate Debtor has also committed default in repayment of Loan Facility demanded by the banks and/or financial institution after invocation of personal guarantee. Further, the Personal Guarantor had informed that he had not made any payment to any secured or unsecured creditor of Orchid Textiles Private Limited in his personal capacity.*
- d No information received from Central Bank of India as the copy has been served by the Applicant to the Creditor(s) at the time of filing the application.*

5. After perusal of the report submitted by Resolution Professional, there does not appear any request of the Resolution Professional for issuance of instruction for the purpose of conducting negotiations between the debtors and the creditors for arriving at the repayment plan. Therefore, based on the reasons recorded in the report submitted by the Resolution Professional, the application i.e. CP(IB) No. 185/Chd/Hry/2021 filed under the provisions of Section 94 of IBC, 2016 is hereby admitted under Section 100 of the IBC, 2016. The Insolvency Resolution Process is initiated against the Applicant/Debtor and

the moratorium is declared, which begins with the date of admission of the application and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of IBC, 2016. During the moratorium period,

- (a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and
- (b) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
- (c) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
- (d) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

6. The Resolution Professional, Mr. Bishwa Ranjan Chatterjee, who has been appointed under Section 97 vide order dated 21.03.2022, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this order on the website of the NCLT, Chandigarh, inviting claims from all creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of IBC, 2016. The publication of notice shall be made in newspapers, one in English and other in Vernacular which have wide circulation in the state where the debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on our website and the other shall be affixed in the premises of this Authority.

7. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under Section 105 which shall include the provisions for payment of fee to the Resolution Professional. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106.

8. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons therefor. If the Resolution Professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3). The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the report under Sub-Section (1) of Section 106, for which at least 14 days notice to the creditors(as per list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107.

9. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 and 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to this Authority, copies of which shall be provided to the debtor and the creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the code of conduct provided under Section 208 of the IBC, 2016.

10. In terms of the above, CP (IB) No. 185/Chd/Hry/2021 filed under Section 94(1) of the IBC, 2016 is allowed & admitted. Consequently, the Insolvency Resolution Process stands initiated against the debtor/Personal Guarantor.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

July 21, 2022

PB/ASH

Sd/-

(Harnam Singh Thakur)
Member (Judicial)